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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS  
SOUTHERN DISTRICT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MONSANTO COMPANY, )  
 )  
Defendant. )

AUG 20 1982

FILED  
NO. 82-3229

DEFENDANT MONSANTO COMPANY'S  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR REMANDMENT

This Court should deny plaintiff's Motion for Remandment because plaintiff brings this litigation on behalf of certain persons and entities, not as a sovereign. The persons and entities plaintiff represents are "citizens" for the purpose of determining whether diversity of citizenship exists. And because the real parties in interest are "citizens" of Illinois, complete diversity of citizenship exists with defendant Monsanto. Ex parte Nebraska, 209 U.S. 436, 28 S.Ct. 581, 52 L.Ed. 876 (1908). Thus federal jurisdiction lies in this Court.

I. DIVERSITY OF CITIZENSHIP EXISTS  
BECAUSE PLAINTIFF IS SUING AS A  
REPRESENTATIVE OF CERTAIN  
"CITIZENS" OF ILLINOIS.

It is clear from the Complaint that the real party in interest is not the entire state of Illinois, as plaintiff

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claims in its Petition for Remandment. Rather, as plaintiff alleges, the real litigants are "those upon whose own behalf Plaintiff brings this action," namely citizens in St. Clair County and "those citizens [of Illinois] in areas downstream of the discharge point." (E.g., Cmplt. Par. 15) These are the persons who plaintiff alleges will be damaged in their use of an underground aquifer and the Mississippi River as a result of defendant Monsanto's alleged conduct.

Where, as here, a state sues on behalf of particular individuals, the citizenship of those individuals determines whether diversity exists. See, Connecticut v. Levi Strauss & Company, 471 F.Supp. 363, 371 (D. Conn. 1979). In Levi Strauss, Connecticut sued in Connecticut state court on behalf of citizens who had allegedly been overcharged in the purchase of defendant's clothing. Defendant removed the case to federal court, asserting federal diversity jurisdiction. In deciding Connecticut's motion for remandment, the court found that "the citizen status of the purchasers rather than the sovereign status of their benefactor [the state] controls for diversity purposes." Id. Thus, citizenship diversity existed for jurisdiction in federal court. <sup>\*/</sup>

Here, as in Levi Strauss, there is an identifiable class of citizens on whose behalf the plaintiff has brought

<sup>\*/</sup> However, the court remanded the case because the jurisdictional amount was lacking. Id.

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this action. (E.g., Cmplt. Par. 16) Thus, the citizenship of these beneficiaries determines whether federal diversity of citizenship jurisdiction exists. Since the beneficiaries of the lawsuit are citizens of Illinois, they are diverse from Monsanto Company, which is a citizen of Delaware and Missouri. (Petition for Removal, Pars. 1, 3) Further, because there is no allegation in the Petition for Remandment that removal is improper for failure to meet the jurisdictional amount, plaintiff concedes that the requisite jurisdictional amount is present. (See also, Petition for Removal, Par. 5) Thus, defendant's removal to federal court is proper.

Precisely the same analysis applies if plaintiff is considered to be bringing this action on behalf of the Illinois municipalities, water districts, and counties that draw their water from the aquifer referred to in the Complaint or use the Mississippi River near to or downstream from the landfill. It is well-established that political subdivisions of a state are citizens for purposes of determining diversity of citizenship. Moor v. County of Alameda, 411 U.S. 693, 717-22, 93 S.Ct. 1785, 1799-1802, 36 L.Ed.2d 596, 614-16 (1973); Illinois v. City of Milwaukee, Wis., 406 U.S. 91, 97-98, 92 S.Ct. 1385, 1389-90; 31 L.Ed.2d 712, 720 (1972). Here, the political subdivisions that might be considered among the real parties in interest are all citizens

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of the State of Illinois and have complete diversity of citizenship with Monsanto. Thus, federal diversity jurisdiction exists in this Court if these are the real parties in interest.<sup>\*/</sup>

Nuclear Engineering Co. v. Scott, 660 F.2d 241

(7th Cir. 1981), relied upon by plaintiff is not on point.

Unlike the case here, no evidence was presented to that court that plaintiff had expressly asserted in its complaint that it was really bringing the action on behalf of certain citizens.

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<sup>\*/</sup> It is the rule that a state loses its sovereign status for jurisdictional purposes when suing on behalf of a limited group of citizens. Missouri, Kansas and Texas Railway Company v. Missouri Railroad and Warehouse Commissioners, 183 U.S. 53, 60, 22 S.Ct. 18, 21, 46 L.Ed. 78, 84 (1901) ("It is true that the State has a governmental interest in the welfare of all its citizens . . . . But such general governmental interest is not that which makes the State, as an organized political community, a party in interest in the litigation . . . ."). Under ordinary circumstances, states may invoke the original jurisdiction of the Supreme Court, while at the same time they are immune from diversity jurisdiction. However, the Supreme Court has repeatedly refused to take original jurisdiction over a state's claim whenever it appeared the state was bringing the claims of specific citizens. Pennsylvania v. New Jersey, 426 U.S. 660, 96 S.Ct. 2333, 49 L.Ed.2d 124 (1976); Oklahoma v. Atchison, Topeka & Santa Fe Railroad, 220 U.S. 277, 31 S.Ct. 434, 55 L.Ed. 465 (1911). Since suing on behalf of particular citizens blocks immediate access to the Supreme Court, because the state is not suing as a sovereign, precisely the same reasoning subjects the plaintiff here to removal to federal court.

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II. PLAINTIFF CONCEDES THAT IT IS  
BRINGING THIS ACTION ON BEHALF  
OF CERTAIN CITIZENS OF ILLINOIS,  
AND THUS THE REQUISITE DIVERSITY  
EXISTS.

Even if this Court were to conclude that plaintiff commenced this action in part as a sovereign, allegations in the Complaint clearly state that plaintiff has brought this lawsuit in large part on behalf of individual citizens of Illinois. For instance, in Complaint Paragraph 15 plaintiff alleges that defendant's conduct has caused injury to "those upon whose own behalf Plaintiff brings this action," namely certain citizens in Southern Illinois. This allegation is repeated in Counts II-IV. Thus, at a minimum, plaintiff is a litigant in a dual capacity: as a sovereign and as a representative of certain citizens of Illinois.

As discussed in Section I, supra, federal diversity of citizenship jurisdiction exists between defendant and plaintiff in its capacity as a litigant on behalf of certain Illinois citizens. In its capacity as a sovereign, however, plaintiff has no citizenship that can defeat this diversity of citizenship for federal jurisdiction. There is no reason in policy or logic to permit plaintiff to defeat Monsanto's rightful removal of this case to federal court merely because the action is brought in part by plaintiff as a sovereign. In this regard the cases cited in

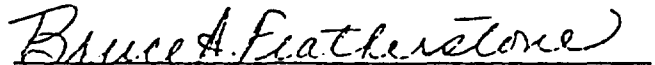
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plaintiff's Motion are inapposite, because they relate to situations where a state sued only in its capacity as a sovereign.

DATED: August 20, 1982

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has caused a true copy of the foregoing document(s) to be served upon:  
MR. REED W. NEUMAN, Assistant Attorney General, Environmental  
Control Division, Southern Region, 500 S. 2nd St., Springfield,  
IL 62706

by causing the same to be placed in sealed envelope(s), clearly addressed as aforesaid, with postage fully prepaid, and by depositing the same in the United States mails at Alton, Illinois on August 20, 19 82 at 5:00 P.M.

HOAGLAND, MAUCKER, BERNARD & ALMETER

BY:

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